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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

THE PEOPLE, Plaintiff and Appellant, v. JENNIFER LYNN BIGHAM, Defendant and Respondent.	F066591 (Stanislaus Super. Ct. No. 1413560) **OPINION**

APPEAL from a judgment of the Superior Court of Stanislaus County. Thomas D. Zeff, Judge.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Catherine Chatman and Larenda R. Delaini, Deputy Attorneys General, for Plaintiffs and Appellants.

Patricia L. Watkins, under appointment by the Court of Appeal, for Defendant and Respondent.

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INTRODUCTION

Defendant was charged with premeditated murder for drowning her three-year-old daughter in a bathtub. Years later, she pled not guilty by reason of insanity. After a hearing at which expert testimony was presented, the trial court found defendant had fully recovered her sanity and ordered her "discharged forthwith."

The People contend the court erred in releasing defendant. We agree. Once the trial court found defendant had fully recovered her sanity, it was required to remand her "to the custody of the sheriff" (Pen. Code,[1] § 1026, subd. (b)) for placement in "the same kind of facility as a … person facing involuntary civil commitment" (*In re Lee* (1978) 78 Cal.App.3d 753, 757) pending "proceedings of involuntary civil commitment" under Lanterman-Petris-Short (*People v. Kelly* (1973) 10 Cal.3d 565, 577, fn. 18 (*Kelly*)). Because the trial court did not follow this mandatory procedure, we reverse the order discharging defendant.

FACTS

On January 19, 2010, the district attorney charged defendant with deliberate and premeditated murder of her three-year-old daughter (count I – § 187, subd. (a)). Defendant was also charged with child abuse causing death (count II – § 273ab) and battery on a paramedic (count III – § 243, subd. (b)).

Defendant initially pled not guilty. After a few years of pretrial discovery, defendant entered an additional plea of not guilty by reason of insanity on July 31, 2012. That day, the court appointed two experts to evaluate defendant pursuant to Penal Code section 1026: Dr. Jocelyn Roland and Dr. Philip Trompetter.

On October 3, 2012, the court asked both experts to provide their opinions regarding whether defendant had fully recovered her sanity. Both experts produced reports and each expressed the opinion that defendant had fully recovered her sanity.

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[1] All further statutory references are to the Penal Code unless otherwise stated.

On January 3, 2013, the district attorney filed a request for the court to refer defendant to a state hospital for treatment and evaluation. (See § 1026, subd. (b).)

At a change of plea hearing on January 8, 2013, defendant stipulated to a finding that she had committed the charged crimes but was not guilty by reason of insanity. The parties stipulated to the following underlying facts:

> "[O]n January 14, 2010, at approximately 5:50 p.m., Stanislaus County sheriff's deputies were dispatched to an address in Patterson regarding a three-year-old girl, [A.B.], who had drowned in a bathtub.
>
> "Upon arrival from the first responders, they found the victim in the hallway near the living room, started performing CPR. A family member was standing nearby, pointed out the defendant … and stated to the deputies, quote, 'She did it. She killed her.'
>
> "The deputies saw the defendant standing by the walkway of the front door. Her only response at one point was, quote, 'She's gone.'
>
> "The paramedic found a stab wound to defendant's chest approximately a quarter of an inch in diameter. A steak knife, with blood, was located near the vanity of the master bathroom of the residence.
>
> "The victim was transported to DMC, pronounced dead at about 9:50 p.m. An autopsy was performed, and the cause of death was found to be from drowning. She did not have any cuts to her body.
>
> "A 20 year old and a 15 year old – 20-year-old and 15-year-old relatives of the victim were present in the home when the incident took place. And after further investigation, the investigators learned that the defendant was locked in the master bedroom with the child, and they heard splashing around in the bathtub area.
>
> "At one point, the defendant had come out of the bedroom, the master bedroom, went to the kitchen, grabbed a knife, and went back into the master bedroom and locked the door.
>
> "At one point, one of the witnesses also heard the child yelling and saying, No. No.
>
> "Later in the day,…the homeowner returned to the house after she was at work. She could not enter the master bedroom. It was locked. She

went through a window in the back of the house, entered the master bedroom, and found the defendant standing at the master bedroom's bathroom area wet, and found the child in the bathtub."

The trial court found defendant guilty on all three counts. The prosecution stipulated that defendant was legally insane at the time of the offense. The trial court then found defendant not guilty of the crimes by reason of insanity and set a hearing to determine whether defendant was still suffering from a mental illness.

On January 22, 2013, the court relied on the expert opinions of Dr. Roland and Dr. Trompetter and found defendant had fully recovered her sanity. The court ordered defendant discharged forthwith.

DISCUSSION

The People contend the court erred in ordering defendant discharged. Instead, they contend that the court should have remanded defendant to the sheriff's custody pending involuntary civil commitment proceedings under the Lanterman-Petris-Short Act (the "Lanterman Act.") (Welf. & Inst. Code, § 5000 et seq.)[2] We agree.

Law

When a court finds a defendant was insane at the time the offense was committed, it must order the defendant committed to a state hospital, "unless it shall appear to the

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[2] Under the Lanterman Act, a person who "as a result of a mental health disorder, is a danger to others" may be taken into custody for up to 72 hours for "assessment, evaluation, and crisis intervention or placement for evaluation and treatment" in an approved facility. (See Welf. & Inst. Code, § 5150, subd. (a).) Under certain conditions, the individual may then be certified for up to "14 days of intensive treatment related to the mental disorder…." (Welf. & Inst. Code, § 5250.) Thereafter, the individual may be certified for an additional 30 days of intensive treatment if certain conditions are met. (Welf. & Inst. Code, § 5270.15.)

The Lanterman Act also provides for appointment of a conservator if the conservatee is gravely disabled. (See Welf. & Inst. Code, § 5358.) The conservator is empowered to have the conservatee involuntarily committed to a psychiatric facility. (See *id*. at subd. (a)(2); see also 38 Cal.Jur.3d (2006) Incompetent Persons, § 123.)

court that the sanity of the defendant has been recovered fully." (§ 1026, subd. (a).) When "it appears to the court that the sanity of the defendant has been recovered fully, the defendant shall be remanded to the custody of the sheriff until the issue of sanity shall have been finally determined in the manner prescribed by law." (§ 1026, subd. (b).) The phrase "in the manner prescribed by law" "encompass[es] proceedings of involuntary civil commitment which are now governed by Welfare and Institutions Code section 5000 et seq. (Lanterman-Petris-Short Act). [Citations.]" (*Kelly*, *supra*, 10 Cal.3d at p. 577, fn. 18. See also 5 Witkin, Cal. Crim. Law 4th (2012) Crim Trial, § 801, p. 1232.)

Analysis

In this case, the court discharged defendant once it concluded she had recovered her sanity. However, the statute mandates a different outcome. Section 1026, subdivision (b) provides that once it "appears to the court that the sanity of the defendant has been recovered fully," the defendant must be "remanded to the custody of the sheriff until the issue of sanity shall have been finally determined in the manner prescribed by law." (§ 1026, subd. (b).) The phrase "in the manner prescribed by law" "encompass[es] proceedings of involuntary civil commitment which are now governed by Welfare and Institutions Code section 5000 et seq. (Lanterman-Petris-Short Act). [Citations.]" (*Kelly*, *supra*, 10 Cal.3d at p. 577, fn. 18. See also 5 Witkin, Cal. Crim. Law 4th (2012) Crim Trial, § 801, p. 1232.) Thus, the court's determination that defendant had recovered her sanity should have been "followed by proceedings of involuntary civil commitment under the Lanterman-Petris-Short Act. [Citations.]" (*In re Lee*, *supra*, 78 Cal.App.3d at pp. 756–757.) In the interim, defendant should have been "remanded to the custody of the sheriff" (§ 1026, subd. (b)) for placement in "the same kind of facility as a … person facing involuntary civil commitment." (*In re Lee*, *supra*, at p. 757.)

None of defendant's contentions alter this conclusion.

Waiver/Forfeiture Principles do not Apply

First, defendant argues this issue was forfeited by the People. The People challenge the factual predicates of defendant's forfeiture claim.[3] The People then argue that even if the prosecutor engaged in conduct that would otherwise invoke the forfeiture and/or waiver doctrines, the issue is nonetheless preserved because "waiver and forfeiture principles have no application to mandatory requirements put in place to benefit the public." We agree with the People's latter contention and therefore do not address the first.

"[T]he benefits of a statute may not be waived by an individual in cases where the statute was enacted for the protection of the public ….' " (*Bianco v. Superior Court of Los Angeles County* (1968) 265 Cal.App.2d 126, 130–131; cf. Civ. Code, § 3513.) " 'A person may waive the advantage of a law intended for his or her benefit [citation], but "a law established for a public reason cannot be waived or circumvented by a private act or agreement" [citations].' [Citation.]" (*People v. Bonnetta* (2009) 46 Cal.4th 143, 152.)

The reason section 1026 provides for commitment of individuals who have been found not guilty by reason of insanity is to "protect[] … the public …." (*People v. Mallory* (1967) 254 Cal.App.2d 151, 156.) Because the relevant law was established for a public reason, it cannot be waived or circumvented by the private act or agreement of the prosecutor. (*See People v. Bonnetta, supra*, 46 Cal.4th at p. 152.) The issue presented here is thus preserved for our review.

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[3] Defendant argues that at the January 8, 2013, hearing, her trial counsel "referred to" section 1026's provision that a defendant found not guilty by reason of insanity be remanded to the sheriff for an evaluation. She further argues her counsel stated that the evaluations of Drs. Trompetter and Roland satisfied section 1026's requirements pursuant to an agreement of the parties. The prosecutor did not address this issue raised by defense counsel. Based on the prosecutor's silence, defendant urges that we "find that the only issue raised by appellant … has been forfeited." We decline to do so, for the reasons set forth herein.

Defendant's Remaining Contentions are Unavailing

In addition to arguing forfeiture, defendant offers several nonsequiturs. She points to the strength of Dr. Trompetter's qualifications, the fact that the experts appreciated the seriousness of the proceedings and the lack of an established legal standard by which trial courts are to determine whether a defendant had fully recovered sanity. None of these considerations impact the straightforward resolution of this case. The considerations cited by defendant are relevant to the trial court's finding that she fully recovered her sanity. But the People are not challenging that finding itself, [4] only its consequences. The question presented here is, *given* the finding of full recovery, should defendant have been discharged immediately or remanded to the custody of the sheriff pending Lanterman Act proceedings? Our answer to this question is not affected by the strength of the evidence underlying the trial court's finding of full recovery or the legal standard employed in making that finding. Indeed, the question presented here has us assume the finding without calling upon us to explore its wisdom. Even assuming the trial court's finding of recovered sanity is entirely unassailable, defendant should have been "remanded to the custody of the sheriff until the issue of sanity shall have been finally determined in the manner prescribed by law" (§ 1026, subd. (b)), including "proceedings of involuntary civil commitment" under the Lanterman Act (*Kelly*, *supra*, 10 Cal.3d at p. 577, fn. 18).

Finally, defendant contends that the People's "only support" is "dicta" from the Supreme Court's decision in *Kelly*. First, *Kelly* is not the only support for the proposition that a defendant should be committed after a finding of full recovery pending Lanterman Act proceedings. (See *In re Lee*, *supra*, 78 Cal.App.3d at pp. 756–757.) Second, we note that the relevant language in *Kelly* was included in the opinion's remand instructions to

[4] This is so even though the time that elapsed between the homicide and the restored sanity finding was just three years.

the trial court. We question whether such remand instructions are correctly considered dicta. (See *Fogerty v. State of California* (1986) 187 Cal.App.3d 224, 234.) Finally, "legal pronouncements by the Supreme Court … should be followed even if dictum. [Citation.]" (*California Amplifier, Inc. v. RLI Ins. Co.* (2001) 94 Cal.App.4th 102, 114.)

DISPOSITION

The trial court's order discharging defendant is reversed. The trial court shall order defendant remanded to the custody of the sheriff for placement in "the same kind of facility as a … person facing involuntary civil commitment" (*In re Lee, supra*, 78 Cal.App.3d at p. 757) pending possible involuntary civil commitment proceedings under the Lanterman Act.

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Poochigian, Acting P.J.

WE CONCUR:

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Franson, J.

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Peña, J.